

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARBARA DIANE WARD,  
a.k.a. DIANE WARD,  
  
Plaintiff,  
  
v.  
  
SUTTER UNION HIGH SCHOOL  
DISTRICT, RYAN ROBISON,  
individually and in His  
Official Capacity; LORI  
TEXEIRA, Individually and  
in Her Official Capacity;  
and SUTTER COUNTY, DAVID  
McFARLAND, Individually and  
in His Official Capacity,\*\*  
  
Defendants.

No. CIV-S-04-0448 GEB (GGH)

ORDER\*

Pending is Defendant David McFarland (a deputy sheriff) and Defendant Sutter County's (McFarland's employer) joint motion for summary judgment on Plaintiff's federal and state claims. The essence of Plaintiff's lawsuit alleges these Defendants wrongfully

\* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

\*\* The caption is amended to reflect the dismissal of John Doe, who is dismissed because Plaintiff failed to file an Amended Complaint identifying John Doe within 60 days of the Status (Pretrial Scheduling) Order filed June 21, 2004. (See Status Order at 2.)

1 investigated, arrested, and imprisoned her for thievery crimes  
 2 suspected of having occurred at Sutter Union High School. Ryan  
 3 Robison (Plaintiff's supervisor who is employed as a  
 4 Principal/Superintendent), Lori Texeira (Plaintiff's co-worker), and  
 5 Sutter Union High School District (Plaintiff's employer) separately  
 6 filed motions for summary judgment in this action, but these  
 7 Defendants "authorized a request that their pending motions for  
 8 summary judgment be removed from this Court's calendar" because  
 9 "Plaintiff has reached a settlement with [them]." (Pl.'s Not. of  
 10 Settlement at 1-2.) In light of these parties' settlement, these  
 11 Defendants' motions are deemed withdrawn.

## 12 **Discussion<sup>1</sup>**

### 13 **I. Federal Claims**

#### 14 **A. McFarland**

15 Plaintiff claims that McFarland violated her Fourth  
 16 Amendment right to be free from unreasonable searches when McFarland  
 17 installed a covert video camera to surveil a student body fund deposit  
 18 pouch. (Pl.'s Opp'n to Defs. Sutter County and McFarland's Mot. for  
 19 Summ. J. ("Pl.'s Opp'n") at xxxix-xl.) McFarland installed the  
 20 challenged surveillance video camera to aid him in his investigation  
 21 of the possible misappropriation of money from the student body fund  
 22 deposit pouch. This pouch was kept in the third drawer of a file  
 23 cabinet, located in a storage room adjacent to the administrative  
 24 office where Plaintiff, Texeira, Robison, and Pat Hill (another  
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26 <sup>1</sup> "The standards applicable to motions for summary  
 27 judgment are well known, see, e.g., Rodgers v. County of Yolo,  
 889 F. Supp. 1284 (E.D. Cal. 1995), and need not be repeated  
 28 here." Reitter v. City of Sacramento, 87 F. Supp. 2d 1040, 1042  
 (E.D. Cal. 2000).

1 District employee) worked. (Id. ¶ 6.) That file cabinet was  
2 accessible to each of these individuals, and teachers regularly  
3 accessed the storage room because it housed other cabinets containing  
4 materials the teachers needed. (Robison Decl. ¶¶ 15-16; Robison Depo.  
5 at 108:6-20; Texeira Depo. at 163:3-18; 167:17-20; 186:3-21; Ward  
6 Depo. at 42:9-21.) The door to the storage room remained open during  
7 business hours. (Ward Depo. at 41:26-42:8.)

8 Plaintiff also claims that McFarland violated her right to  
9 privacy under the Fourteenth Amendment when he obtained information  
10 from school officials related to her wages. (Id. at xl.)  
11 Furthermore, Plaintiff alleges that McFarland violated her Fourth  
12 Amendment right to be free from unreasonable seizures when he arrested  
13 her for embezzlement, grand larceny, and burglary. (Id. at xxxiv-  
14 xxxvii.) Finally, Plaintiff alleges that McFarland violated her right  
15 to equal protection by maliciously prosecuting her. (2d Am. Compl.  
16 ¶¶ 34-39.)

## 17 1. Invasion of Privacy

### 18 a. Surveillance Video

19 Whether Plaintiff has an actionable privacy interest which  
20 was violated by McFarland's use of the video surveillance is analyzed  
21 under the Fourth Amendment's reasonable expectation of privacy  
22 standard. Armendariz v. Penman, 75 F.3d 1311, 1319 (9th Cir. 1996)  
23 (indicating that when the Fourth Amendment provides explicit  
24 limitations on the type of government conduct challenged by plaintiff,  
25 that Amendment should guide the analysis of plaintiff's claim). "A  
26 Fourth Amendment search occurs when the government violates a  
27 subjective expectation of privacy that society recognizes as  
28 reasonable." Kyllo v. United States, 533 U.S. 27, 33, (2001).

1            "[T]he Fourth Amendment forbids warrantless videotaping of a  
 2 private office." United States v. Gonzalez, 328 F.3d 543, 548 (9th  
 3 Cir. 2003). But Plaintiff had no private work space in the storage  
 4 room since neither the surveilled storage room nor the file cabinet  
 5 holding the student body fund deposit pouch was under the exclusive  
 6 control of Plaintiff. (Robison Decl. ¶ 16); Gonzalez, 328 F.3d at  
 7 548. Even though Plaintiff contends that she subjectively believed  
 8 what occurred in the storage room was private, Plaintiff's subjective  
 9 belief was not objectively reasonable given the open nature of the  
 10 storage room to other school officials.<sup>2</sup> Kyllo, 533 U.S. at 33;  
 11 O'Connor, 480 U.S. at 717-18 (plurality opinion). Therefore,  
 12 McFarland's videotaping of activity in the storage room did not invade  
 13 Plaintiff's reasonable expectation of privacy under the Fourth  
 14 Amendment.

15            b. *Personal Information*

16            McFarland also seeks summary judgment on Plaintiff's  
 17 Fourteenth Amendment claim that he violated her right to informational  
 18 privacy by obtaining from Robison information about her salary and  
 19 wage garnishments.<sup>3</sup> (Pl.'s Opp'n at xxxix-xl.) One of the elements  
 20 Plaintiff must establish to prevail on this claim is that McFarland  
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22            <sup>2</sup> \_\_\_\_\_ Plaintiff argues that she had a reasonable expectation  
 23 of privacy in the storage room because she used the storage room  
 24 to adjust clothing, including undergarments, and students used  
 25 the storage room to administer insulin injections. (Texeira  
 26 Depo. at 167:20-23; Ward Depo. at 42:9-21.) However, these  
 activities did not convert this area into a place where  
 Plaintiff's subjective expectation of privacy is recognized as  
 reasonable. See O'Connor v. Ortega, 480 U.S. 709, 716 (1987)  
 (plurality opinion).

27            <sup>3</sup> Robison did not disclose Plaintiff's precise salary;  
 28 rather, he indicated that Plaintiff's salary was the lowest on  
 the staff. (McFarland Decl. ¶ 5.)

1 obtained constitutionally protected information. See Crawford v.  
2 United States Trustee, 194 F.3d 954, 958 (9th Cir. 1999) (indicating  
3 that informational privacy concerns unique information that is not  
4 generally made public). But Plaintiff has not shown that she has  
5 recognized privacy interests in the information McFarland obtained.  
6 General salary ranges for California public employees are available  
7 for public review, and wage garnishments are the result of a public  
8 procedure. Cal. Gov't Code § 6253(a); see generally Cal. Civ. Proc.  
9 Code § 706.026(b). Thus, McFarland is granted summary judgment on  
10 this claim.

## 11 2. False Arrest

12 McFarland seeks summary judgment on Plaintiff's false arrest  
13 claim, contending he had probable cause to arrest Plaintiff for  
14 embezzlement,<sup>4</sup> grand theft,<sup>5</sup> and burglary.<sup>6</sup> Arrests without probable  
15 cause give rise to liability under 42 U.S.C. § 1983. McKenzie v.  
16 Lamb, 738 F.2d 1005, 1007 (9th Cir. 1984) (citing Gilker v. Baker, 576  
17 F.2d 245 (9th Cir. 1978)). Probable cause exists when, "under the  
18 totality of the circumstances known to the arresting officers, a  
19 prudent person would have concluded that there was a fair probability  
20 that [the] suspect had committed a crime." Peng v. Hu, 335 F.3d 970,  
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22 <sup>4</sup> Embezzlement is the fraudulent appropriation of  
23 property by a person to whom it is entrusted. Cal. Penal Code  
24 § 503.

25 <sup>5</sup> Grand theft is committed where money is taken by an  
26 employee from his or her employer that aggregates four hundred  
27 dollars (\$400) or more in any twelve consecutive month period.  
28 Cal. Penal Code § 487(b) (3).

<sup>6</sup> Every person who enters any room or other building with  
intent to commit grand or petit larceny or any felony is guilty  
of burglary. Cal. Penal Code § 459.

976 (9th Cir. 2003) (citation omitted); see Maryland v. Pringle, 540 U.S. 366, 371 (2003) (holding that probable cause is determined based on the facts available to the officer at the time of the arrest).

McFarland points to the information he had, which he contends supports his position that he had probable cause to arrest Plaintiff. Video surveillance of the file cabinet holding the investigated student body fund deposit pouch was conducted from May 18 to May 28, 2003. (McFarland Decl. ¶¶ 9, 18.) On May 29, 2003, McFarland and another detective interviewed Hill, Texeira, and Plaintiff (sequentially) in Robison's office regarding the money missing from the student body fund deposit pouch. (McFarland Decl. ¶¶ 21, 22, 23; Zembiec Decl. ¶ 10.) McFarland formally arrested Plaintiff at the conclusion of her interview. (McFarland Decl. ¶ 25.)

At the time McFarland arrested Plaintiff, McFarland had gathered the following information:<sup>7</sup>

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<sup>7</sup> Plaintiff argues that there are genuine issues of material fact as to the facts listed below because (1) McFarland's expert testified that McFarland did not have direct or circumstantial evidence to support probable cause (Zwickey Depo. at 101:7-24), (2) McFarland's police report is silent on whether Plaintiff placed money into the student body fund deposit pouch (Mancl Decl. ¶ 25, Exh. 24), (3) there is an alternative *post hoc* explanation for what happened to the money missing from the student body fund deposit pouch (McFarland Depo. at 185:9-20), and (4) the Sutter County Sheriff testified that he could not form an opinion as to probable cause based on a review of a portion of the information presented to McFarland (Denney Depo. at 99:14-100:19). Plaintiff's first argument fails because she mischaracterizes Zwickey's deposition testimony. Plaintiff's remaining arguments fail to create a genuine issue of material fact as to whether McFarland reasonably concluded that he had probable cause to arrest Plaintiff based on the circumstances of which he was aware at the time of the arrest.

1 (1) Robison reported \$10,000 and Texeira reported that as  
2 much as \$20,000 had been stolen from the student body funds during the  
3 school year (McFarland Decl. ¶ 40(a));<sup>8</sup>

4 (2) The surveillance camera captured Plaintiff taking money  
5 out of the student body fund deposit pouch kept in the third drawer of  
6 the file cabinet in the storage room on May 19 and May 20, 2003, and  
7 Plaintiff was not observed putting money back inside the pouch on  
8 either day (Id. ¶¶ 11, 13, 19, 40(c), (h); McFarland Depo. at 363:18-  
9 365:2, 365:22-366:7, 369:22-372:5, 374:23-375:7);<sup>9</sup>

10 (3) Plaintiff was the only person seen on the videotape  
11 taking money out of the student body fund deposit pouch kept in the  
12 surveilled drawer without putting money into the pouch (McFarland  
13 Decl. ¶ 40(i); Zembiec Decl. ¶ 9; McFarland Depo. at 358:10-359:12;  
14 380:6-381:20); and

15 (4) There was money missing from the student body fund  
16 deposit pouch on May 19 and May 20, 2003 - the days that Plaintiff was  
17 seen taking funds out of the pouch without placing money back into the  
18 pouch (McFarland Decl. ¶¶ 10-13, 40(d), (h)).<sup>10</sup>

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19  
20 <sup>8</sup> While Plaintiff disputes the accuracy of Texeira's  
21 \$20,000 figure, it is undisputed that Texeira told McFarland that  
22 approximately \$20,000 was stolen from the investigated student  
body funds.

23 <sup>9</sup> Plaintiff argues that this fact is disputed because  
24 McFarland didn't know what happened to the money she took from  
25 the student body fund deposit pouch after she left the storage  
26 room. This argument, however, does not controvert McFarland's  
declaration that he observed Plaintiff remove money from the  
student body fund deposit pouch, but did not observe her  
returning money to the pouch.

27 <sup>10</sup> Plaintiff declares that she never stole money from the  
28 District or the student body fund deposit pouch. (Ward Decl. ¶¶  
1-2.) But this declaration does not undermine the circumstances

(continued...)

Based upon "the totality of the circumstances known to [McFarland], a prudent person could have concluded that there was a fair probability that [Plaintiff] had committed [embezzlement, grand theft, and burglary]." Peng, 335 F.3d at 976 (citation omitted). Since McFarland had probable cause to arrest Plaintiff, his summary judgment motion is granted on this claim.<sup>11</sup>

### 3. False Imprisonment

McFarland asserts that Plaintiff's false imprisonment claim is based exclusively on her arrest. (McFarland's Sep. Stmt. ¶ 52.) This has not been controverted by Plaintiff. (Pl.'s Resp. to McFarland's Sep. Stmt. ¶ 52.) Therefore, summary judgment is entered on Plaintiff's false imprisonment claim.

### 4. Malicious Prosecution

McFarland also seeks summary judgment on Plaintiff's malicious prosecution claim. One of the elements Plaintiff must show to prevail on this claim is that a criminal prosecution was initiated against her. Usher v. City of Los Angeles, 828 F.2d 556, 562 (9th

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<sup>10</sup> (...continued)  
on which McFarland based his probable cause to arrest Plaintiff. Plaintiff also argues that McFarland (1) did not consider other suspects, (2) failed to conduct a thorough investigation, and (3) was unaware of facts implicating Texeira. (Pl.'s Opp'n at xxx.) These arguments do not negate the probable cause McFarland had to arrest Plaintiff. Further, Plaintiff asserts that McFarland now concedes that he did not have probable cause at the time of the arrest (Pl.'s Opp'n Sep. Stmt. ¶ 205), but this assertion mischaracterizes McFarland's deposition testimony and McFarland's objection to this mischaracterization is sustained.

<sup>11</sup> Plaintiff also argues that her constitutional rights were violated because McFarland did not inform Plaintiff of her *Miranda* rights when he interviewed her in Robison's office. This argument fails because it is not based on an actionable claim under § 1983. Chavez v. Martinez, 538 U.S. 760, 771-772, 789-790 (2003).



1 Cir. 1987) (citing Singleton v. Perry, 45 Cal. 2d 489, 494 (1955)).  
 2 McFarland submits uncontroverted evidence that no criminal charges  
 3 were filed against Plaintiff. (Schroeder Decl. ¶ 2; Exh. A.)  
 4 Therefore, McFarland is granted summary judgment on this claim.

5 B. Sutter County

6 Since McFarland has prevailed on Plaintiff's federal claims,  
 7 Plaintiff's federal claims against Sutter County "[are] moot because  
 8 [Plaintiff] suffered no constitutional deprivations." Saman v.  
 9 Robins, 173 F.3d 1150, 1157 (9th Cir. 1999). Therefore, summary  
 10 judgment on Plaintiff's federal claims is entered in favor of Sutter  
 11 County.

12 **II. *Remaining State Law Claims***

13 Since all of Plaintiff's federal claims have been decided,  
 14 it is determined whether supplemental jurisdiction should continue  
 15 being exercised over Plaintiff's state law claims. 28 U.S.C.  
 16 § 1367(c)(3). Plaintiff's remaining state claims against McFarland  
 17 and Sutter County are for defamation, intentional infliction of  
 18 emotional distress, and negligence.<sup>12</sup> (2d Am. Compl. ¶¶ 40-57.)

19 Exercise of supplemental jurisdiction is discretionary.  
 20 Mendoza v. Zirkel Fruit Co., 301 F.3d 1163, 1174 (9th Cir. 2002).  
 21 "[W]hen deciding whether to exercise supplemental jurisdiction, a  
 22 federal court should consider and weigh in each case, and at every  
 23 stage of litigation, the values of judicial economy, convenience,  
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25 <sup>12</sup> Further, the recent settlement reached by Plaintiff,  
 26 Robison, Texeira, and the District gives rise to a state  
 27 contract. See Jessup v. Luther, 277 F.3d 926, 929 (7th Cir.  
 28 2002) (citing Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S.  
 375, 378-382 (1994), and stating that "[a] settlement is just  
 another contract to be enforced in the usual way, that is, by a  
 fresh suit.").

1 fairness, and comity." City of Chicago v. Int'l Coll. of Surgeons,  
2 522 U.S. 156, 173 (1997) (internal citations omitted).

3 [I]n the usual case in which all federal-law  
4 claims are eliminated before trial, the  
5 balance of factors to be considered under the  
6 pendent jurisdiction doctrine . . . will  
point toward declining to exercise  
jurisdiction over the remaining state-law  
claims.

7 Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988);  
8 see Bryant v. Adventist Health Sys./West, 289 F.3d 1162, 1169  
9 (9th Cir. 2002) (applying Carnegie-Mellon to supplemental  
10 jurisdiction).

11 Since all federal claims have been resolved, this Court  
12 declines to continue exercising supplemental jurisdiction over  
13 Plaintiff's state law claims "as a matter of comity and to . . .  
14 procur[e] for [the parties] a surer-footed reading of applicable  
15 [California] law." United Mine Workers of Am. v. Gibbs, 383 U.S.  
16 715, 726 (1966). Accordingly, Plaintiff's remaining state law  
17 claims are dismissed as of the date on which this order is filed.

18  
19 IT IS SO ORDERED.

20 Dated: July 7, 2005

21  
22 /s/ Garland E. Burrell, Jr.  
23 GARLAND E. BURRELL, JR.  
24 United States District Judge  
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